

6100 - NONCONFORMING DEVELOPMENT

Municode link: http://library.municode.com/HTML/12090/level2/APXBZO_6000GERE.html#APXBZO_6000GERE_6100NODE

6110 - Purpose

It is the declared purpose of this section that nonconforming development be controlled so that it is not a nuisance to the community, eventually eliminated, and that development be required to comply with the regulations of the Wichita Falls Code of Ordinances, having due regard for the property rights of the persons affected, public welfare, aesthetics and function of the neighborhood, and the character of the surrounding area.

6120 - Nonconforming Parcels

A nonconforming platted parcel which does not meet the minimum area or width requirement may continue to exist if the lot has a structure located thereon. A nonconforming parcel shall not be created unless a variance to the Code of Ordinances has been granted by the board of adjustment.

If no structure exists, the nonconforming parcel may be developed if the proposed use is allowed in that zoning district, and if all other requirements of the zoning ordinance are met which include, but are not limited to setback requirements, parking, and landscaping, are fulfilled. Such nonconforming parcel, if created since the adoption of the zoning ordinance, shall first be required to obtain a variance from the board of adjustment.

6125 - Nonconforming Structures

An occupied nonconforming structure which is not in conformity with the minimum requirements for the district in which it is located may continue to exist subject to the following.

- A. *Nonresidential structures.* A structure which is in noncompliance with the height or setback requirements of the zoning ordinance, but in compliance as to use of the structure, may be altered in a manner that does not increase the degree of noncompliance of the height or setback requirement, as long as all other provisions of the zoning ordinance including, but not limited to, building coverage, landscaping, and parking requirements, are met. Such an addition shall be on the same lot as the original structure, and the addition shall not be greater in area than the size of the ordinal structure before alteration.
- B. *Residential structures.*
 - 1. A nonconforming single-family or duplex residential structure, including garages or storage buildings, may be altered in the above manner as long as it is no closer than three feet to a property line which is common with the adjacent property.
 - 2. Residential garages, carports and storage buildings may be reconstructed on their original foot print, as long as the size of the structure is not expanded or is not enlarged past what is permitted within that district for that type of structure as defined in the Code of Ordinances if all other requirements of the zoning ordinance, such as, but not limited to, setback requirements, parking, building coverage, etc. are fulfilled.

The wall height of the structure shall not exceed eight feet. The wall height may be increased if it can be proven that a greater wall height existed immediately prior to the destruction and/or removal of the garage. If it is proven that a wall height greater than eight feet existed prior to the destruction and/or removal of the structure, the proposed wall height shall not be greater than that which existed. The overall height shall not, regardless of past conditions, exceed the wall height of the primary dwelling unit.

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The structure shall contain the same exterior materials as found in the primary residence or as existed prior to its removal. This provision shall not be interpreted to require the re-installation of materials which have been determined as hazardous which include, but are not limited to materials containing lead or asbestos.

Structures shall be compatible with structures in the immediate vicinity in appearance and function. The burden of proof of previous conditions, such as wall height, exterior building materials and other past conditions shall be the responsibility of the applicant. The director of community development or designee shall be responsible for determination of compatibility of use, function and appearance.

6127 - Nonconforming Uses—Expansion

An existing nonconforming use may be expanded, extended or enlarged subject to the conditional use approval process provided in section 7200 as long as all other provisions of the zoning ordinance including, but not limited to, building coverage, landscaping, and parking requirements, are met. The expansion must be on the same lot where the nonconforming use is located. However, additional property may be used as a parking area.

6130 - Nonconforming Use And Structure—Reconstruction

Subject to the conditional use approval process provided in section 7200, the planning and zoning commission may authorize the reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use, subject to the following restrictions and limitations:

1. A right to operate and/or rebuild a nonconforming use terminates when the structure housing the use is destroyed by the intentional act of the owner or his agent.
2. When a structure has been damaged by fire or other causes to the extent of not more than 50 percent of the replacement cost of the structure on the date of the damage.
3. The structure must be restored or reconstructed so as to have the same approximate height and floor area that it had immediately prior to the damage or destruction. This provision shall not exempt the replacement of a structure of less height or floor area. The property owner has the burden of proof to establish the height and floor area of the structure immediately prior to the damage or destruction.
4. Reconstruction must be commenced within one year of the damaging event and substantially complete as determined by the director of community development within one year from the date of commencement. If the director of community development or his designee determines that the applicant has made a good faith effort but has failed to substantially complete such reconstruction within one year, due to unusual circumstances, the director of community development or his designee may grant a six-month extension.
5. A restoration or reconstruction in violation of this section, or in violation with other ordinances or building codes immediately terminates the right to operate the nonconforming structure.

6140 - Nonconforming Use—Conversion

The conversion of a nonconforming use to another nonconforming use, regardless of nature of the use, shall be subject to the conditional use approval process provided in section 7200. The planning and zoning commission may authorize the conditional use permit subject to the following:

1. A nonconforming use may be converted to another nonconforming use provided the noise, odor, refuse, traffic volumes and patterns, hours of operation, parking requirements and other factors are similar or less intense.
2. Under no circumstance may a nonconforming use convert to a less restrictive use category.

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3. When a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.
4. If adjacent to a residential use or district, a use which previously was issued a permit by the city or state to sell alcohol in any form or by any method other than for off-premise consumption, shall not be allowed to continue to dispense or sell such alcohol in any form or by any method except if allowed in that district and subject to the conditions set forth in this ordinance.
5. The conversion of a nonconforming use shall be subject to requirements of this ordinance and other applicable codes and ordinances of the city.
6. Awnings, canopies and other structures ancillary to the preceding use(s), not associated with the proposed use, and which are nonconforming shall be demolished or otherwise removed.

6145 - Same—Discontinuance

The right to operate as a nonconforming use terminates if the nonconforming use has discontinued operations or remains vacant or unused for two years or more. The planning and zoning commission may grant a conditional use permit for continuing the operation of a nonconforming use if the structure proposed for the nonconforming use is a commercial structure, and is in conformance with section 6100.

6150 - Nonconforming Site Elements

Site elements as defined herein shall not be considered as "grandfathered", and shall be required to comply with existing policies and regulations when changing land uses, expanding an existing land use, structure or parcel, or re-occupation of a structure which has been vacant or unused for its originally intended purpose for two years or longer.

1. When changing land uses, expanding an existing land use, structure or parcel, or re-occupation of a structure which has been vacant or unused, the owner, tenant, developer or agent shall be responsible for removing all nonconforming canopies or awnings; removing all canopies or awnings not normally associated with the function of the proposed use; and removing nonconforming signage including support structures.
2. When changing land uses, expanding an existing land use, structure or parcel, or re-occupation of a structure which has been vacant or unused, the owner, tenant, developer or agent shall be responsible for providing landscaping, sidewalks, handicapped parking and parking paving, stripping or other elements as required under existing policies or regulations.
3. When changing land uses, expanding an existing land use, structure or parcel, or re-occupation of a structure which has been vacant or unused, the director of community development or designee shall evaluate proposed site circulation for conflicts or potential for conflicts by uses proposed for the site, who may require modifications or re-design of such areas.
4. When changing land uses, expanding an existing land use, structure or parcel, or re-occupation of a structure which has been vacant or unused, the director of community development or designee shall evaluate ingress and egress points with regard to current policies, practices and regulations for such, along with associated curb cut locations. The director may require the modification or relocation of curb cut locations to accommodate the proposed use by considering conflicts or potential for conflicts with existing or anticipated traffic characteristics of the thoroughfare involved.